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4 **UNITED STATES DISTRICT COURT**  
5 **NORTHERN DISTRICT OF CALIFORNIA**  
6 **SAN JOSE DIVISION**  
7

8 MELINA RAZAVI,  
9 Plaintiff,

10 v.

11 ELIZABETH STRICKLAND, et al.,  
12 Defendants.

Case No. 18-cv-01933-BLF

**ORDER ADOPTING REPORT AND  
RECOMMENDATION OF  
MAGISTRATE JUDGE; AND  
DISMISSING ACTION WITHOUT  
PREJUDICE**

[ECF 1, 6]

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15 On March 28, 2018, pro se Plaintiff Melina Razavi filed a letter complaint and an  
16 application to proceed in forma pauperis (“IFP”). ECF 1, 2. On May 17, 2018, Magistrate Judge  
17 Nathanael M. Cousins, to whom the case initially was assigned, granted the IFP application.  
18 Order, ECF 5. Judge Cousins, however, dismissed the complaint with leave to amend for failing  
19 to comply with the pleading requirements of Federal Rules of Civil Procedure 8 and 10 and for  
20 lack of federal subject matter jurisdiction. *Id.* Judge Cousins advised Razavi that he will  
21 recommend dismissing the case if an amended complaint was not filed by June 18, 2018. *Id.* at 6.  
22 On June 25, 2018, Judge Cousins directed that the case be reassigned to a district judge, and  
23 issued a Report and Recommendation (“R&R”) that the case be dismissed for the reasons stated in  
24 his May 17, 2018 Order. R&R, ECF 6.

25 Razavi has not filed an objection to the R&R and the time to object has expired. *See* Fed.  
26 R.Civ. P. 6(d), 72(b)(2). The Court finds Judge Cousins’ R&R and Order to be well-reasoned and  
27 correct in every respect, and ADOPTS the R&R in its entirety. In particular, the Court agrees with  
28 Judge Cousins’ conclusion that the complaint fails to establish that this Court lacks subject matter

1 jurisdiction. The two main sources of subject matter jurisdiction are federal question jurisdiction  
2 (also known as “arising under” jurisdiction) and diversity jurisdiction. First, with respect to  
3 federal question jurisdiction, federal courts have original jurisdiction over civil claims “arising  
4 under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A claim “arises  
5 under” federal law if, based on the “well-pleaded complaint rule,” the plaintiff alleges a federal  
6 claim for relief. *Vaden v. Discovery Bank*, 129 S. Ct. 1262, 1272 (2009).

7 Here, the complaint fails to establish federal question jurisdiction. Although the complaint  
8 mentions “Civil Rights” and the “ADA,” the complaint’s allegations are directed to the pled state  
9 law claims including assault, battery, conspiracy, and fraud. The mere reference of a federal  
10 statute is insufficient to support federal question jurisdiction. *Easton v. Crossland Mortg. Corp.*,  
11 114 F.3d 979, 982 (9th Cir. 1997) (holding that the “mere reference of a federal statute in a  
12 pleading will not convert a state law claim into a federal cause of action if the federal statute is not  
13 a necessary element of the state law claim and no preemption exists”). As such, the Court finds  
14 that the complaint does not establish federal question jurisdiction.

15 Turning to the whether there is diversity jurisdiction, the complaint must allege that the  
16 matter in controversy is between citizens of different states and the amount in controversy must  
17 exceed \$75,000 to invoke diversity jurisdiction in an action involving U.S. citizens. 28 U.S.C.  
18 §1332(a)(1). Diversity jurisdiction requires “complete diversity,” that “plaintiffs and each  
19 defendant be citizens of different states.” *Allen v. Boeing Co.*, 821 F.3d 1111, 1115 (9th Cir.  
20 2016). Here, the complaint does not allege the citizenship of any party, or an amount in  
21 controversy, so diversity jurisdiction is not satisfied.


22 Judge Cousins identified the above deficiencies in his screening order dismissing the  
23 complaint, and he granted Razavi an opportunity to amend the complaint by June 18, 2018. *See*  
24 Order. Razavi also had an opportunity to address the deficiencies by filing objections to Judge  
25 Cousins’ R&R. However, Razavi has neither filed an amended complaint nor objected to the  
26 R&R. Because Razavi has failed to timely file an amended complaint, the Court finds that it is  
27 appropriate to dismiss the case at this time. Accordingly, this action is DISMISSED WITHOUT  
28 PREJUDICE. *See* Fed. R. Civ. P. 41(b); *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065 (9th

1 Cir. 2004) (“The failure of the plaintiff eventually to respond to the court’s ultimatum . . . is  
2 properly met with the sanction of a Rule 41(b) dismissal.”).

3 The Clerk shall close the file.

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5 **IT IS SO ORDERED.**

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7 Dated: July 16, 2018

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9 BETH LABSON FREEMAN  
United States District Judge